

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

SIRIWAN KONGPIWATANA,

Cross-Complainant and Appellant,

v.

SOMSONG PEWKLIENG,

Defendant, Cross-Defendant and
Respondent

.

B237911

(Los Angeles County
Super. Ct. No. BC 394100)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael L. Stern, Judge. Affirmed.

Lurie, Zepeda, Schmalz & Hogan, Troy L. Martin and Payton E. Garofalo for Appellant and Cross-Complainant.

Panitz & Kossoff, Kenneth W. Kossoff and Donna M. Klugman for Respondent and Cross-Defendant.

I. INTRODUCTION

The instant civil action was originally filed by Wisit and Supatra Boonthawesuk¹ against Decedent Mani Pewklieng (“Decedent”) and Cross-Complainant and Appellant Siriwan Kongpiwatana (“Kongpiwatana”). On March 15, 2010, Kongpiwatana filed the Cross-Complaint against Cross-Defendant and Respondent Somsong Pewklieng (“Administrator”). Kongpiwatana filed a First Amended Cross-Complaint on September 23, 2010. Kongpiwatana filed the Second Amended Cross-Complaint on December 20, 2010, alleging causes of action for (1) breach of oral contract; (2) breach of implied in fact agreement; (3) breach of oral joint venture agreement; and (4) quiet title.

Trial was held before the Court. On July 29, 2011, the trial court entered Partial Judgment against Kongpiwatana on her cause of action for quiet title. On September 22, 2011, the trial court entered judgment in favor of the Administrator and against Kongpiwatana on the three remaining causes of action. The trial court issued a Statement of Decision on October 18, 2011.

On appeal from the judgment, Kongpiwatana contends that the trial court erred in finding that no “*Marvin*” agreement (*Marvin v. Marvin* (1976) 18 Cal.3d 660) existed, that Kongpiwatana may not claim that the Administrator is equitably estopped from asserting the statute of frauds, that Kongpiwatana intended to sever the joint tenancy agreement, and that all four causes of action are barred by the respective statute of limitations.

II. BACKGROUND

Kongpiwatana met the Decedent when they both lived in Thailand. Kongpiwatana moved to the United States in 1978 and the Decedent followed her one year later. Though they were never formally married, they lived together as husband and wife from 1979 until Decedent’s death in 2009. They agreed to combine their efforts and

¹ Kongpiwatana and Decedent eventually settled with the Boonthawesuks. Accordingly, their claims are not relevant to this appeal.

earnings and share equally in all property acquired during their relationship. When one of them passed away, the survivor would succeed to ownership of all property. They were co-owners of a bank account; they deposited all earnings and paid all expenses out this account for 30 years.

Kongpiwatana and Decedent opened a contract sewing business together. They co-managed the business and deposited all profits into their joint bank account.

In 1986, Kongpiwatana and Decedent purchased a home on Fargo Street in Los Angeles. They took title to the home as “husband and wife, joint tenants.”

Around 1986, Kongpiwatana and Decedent began discussing the purchase of an apartment building. Together they found two lots on Court Street (the “Property”) in Los Angeles to purchase. Title to the first lot was taken as “Manit Pewklieng and Siriwan Kongpiwatana, husband and wife and Supatra Boonthawesuk, a married woman as her sole and separate property all as joint tenants.” Kongpiwatana and Decedent purchased the second lot around August 1986. Title to second lot was taken as “Manit Pewklieng and Siriwan Kongpiwatana, husband and wife, as joint tenants, as to an undivided half interest; and Supatra Boonthawesuk, a married woman, as her sole and separate property, as to an undivided [half] interest.”

Kongpiwatana claimed that her family in Thailand provided them with loans to purchase the two lots and finance the construction. In total, the loans were between 1.4 and 1.5 million dollars. Kongpiwatana admitted she did not have any documents with her in the United States to evidence the loans from her family.

In early 2000, Kongpiwatana and Decedent discussed selling the Property and moving back to Thailand. Kongpiwatana executed a quitclaim deed around March 15, 2000. She claimed she signed the quitclaim deed because “That will help Manit Pewklieng (Decedent) to be able to sell the apartments if I’m not living here.” Further, they discussed that if one of them died, “The one who lives is the owner.” Kongpiwatana testified she had no intent to relinquish her ownership interest by signing the quitclaim deed. The quitclaim deed identified Kongpiwatana as “Siriwam (sic) Kongpiwatana, (wife of the Grantee), a married woman” and Decedent as “Manit

Pewklieng, a married man.” Kongpiwatana and Decedent jointly managed the Property until Decedent’s death in May 2009. After the quitclaim deed was executed, Decedent attempted to sell the Property. The Property was never sold. Kongpiwatana testified she never took any action against Decedent in order to have her name put back on the title because she considered him as her husband.

In 2008, while on a trip to Thailand, Decedent was admitted to a hospital for treatment of liver cancer. In January 2009, Kongpiwatana traveled to Thailand to take care of Decedent. Decedent executed a Thai will that bequeathed all of his property in Thailand, consisting of five condominiums in Bangkok to Kongpiwatana. Decedent also began to create a holographic will, but never executed it.

While in the hospital in 2009, Decedent instructed an attorney, Kukiat Ruchirek (“Ruchirek”) to draft a will leaving the Property to Kongpiwatana. Ruchirek testified that Decedent did not execute the will because Kongpiwatana informed Decedent that an attorney, Into Champon, in Los Angeles stated that a Thai will would not be effective in Los Angeles. Decedent died on May 1, 2009. After Decedent’s death, the Property was the only real property owned by Decedent that did not pass to Kongpiwatana

The Administrator testified that the Decedent told her that Mani Fashions, the Decedent’s business, made a lot of money and that he used money from Mani Fashions to buy the Property. Kongpiwatana testified that she believed that the signature of Supatra Boonthawesuk on the quitclaim deed transferred all of Ms. Boonthawesuk’s interest in the Property to the Decedent. However, she testified that the quitclaim deed did not transfer her interest because she did not intend to transfer title at the time she signed it. Kongpiwatana testified that as far as she and the Decedent were concerned she continued to co-own the Property with the Decedent stating “it’s just a document.”

The Administrator confirmed during her testimony that when the Decedent immigrated to the United States from Thailand in 1979, he came with his then legally married wife.

Both the Administrator and Montira Pewklieng, who were sisters of the Decedent, testified that the Decedent never referred to Kongpiwatana as his wife. Sonchai Sobhawongse, who was the resident manager of the Property for 15 years, testified that the Decedent never referred to Kongpiwatana as his wife in Sobhawongse's presence.

Kongpiwatana stated that the Property was the only property of the Decedent's which she does not own. She testified that during his lifetime, Decedent provided financial assistance to his mother. Montira Pewklieng, the Decedent's sister testified that her mother was still alive. She also testified that the Decedent told her while he was hospitalized in Thailand, that it was time for her to learn to manage the Property and that Kongpiwatana had nothing to do with the Property because it was his property that he kept for Montira for her to manage and take care of. The Administrator testified that sometime during 2003-2004, the Decedent told her that Kongpiwatana and he had divided the property acquired during their relationship.

Into Champon is a lawyer. His firm had represented Decedent and Kongpiwatana. He testified that he did not tell Kongpiwatana before the Decedent's death that a will prepared by an attorney in Thailand could not be used in America and that it must be prepared by an attorney who is licensed in America.

Montira Pewklieng testified that Kongpiwatana told her that Kongpiwatana had sent her younger brother to the Decedent's hospital room in early 2009 to get the Decedent to transfer ownership of the Property to her younger brother, but that the Decedent refused to do so.

III. DISCUSSION

An appellate court never presumes error; rather a presumption of correctness is accorded to the trial court's ruling. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) We do not reassess credibility or reweigh evidence because these matters are solely in the trier of fact's province. (*In re Marriage of Greenberg* (2011) 194 Cal.App.4th 1095, 1099; *In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 204.)

The trial court found that Kongpiwatana failed to satisfy the burden of proof with respect to the existence of a “*Marvin*” agreement and that Kongpiwatana’s testimony was not credible. In the statement of decision, the trial court wrote: “The Court finds that Kongpiwatana failed to satisfy her burden of proof with respect to the existence of a *Marvin* agreement between her and the Decedent. Kongpiwatana did not prove by even a preponderance of the evidence, let alone by clear and convincing standard required in the case, that a *Marvin* agreement existed between Kongpiwatana and the Decedent to own all the real property acquired during their relationship in joint tenancy, so that the survivor of the two would become the sole owner of the property. Consequently, the Court finds in favor the Administrator and against Kongpiwatana on all four causes of action. [¶] Title to the Property is vested in the Decedent, and anyone seeking to divest a record owner of title to real property must prove his/her entitlement to that property by clear and convincing evidence. [Citations.] [¶] The Court finds that Kongpiwatana’s testimony concerning her alleged *Marvin* agreement with the Decedent was not credible. . . .”

The trial court made its findings based on the credibility of the witness.

“‘Thus, where the issue on appeal turns on a failure of proof at trial, the question for the reviewing court becomes whether the evidence compels a finding in favor of the appellant as to matter of law. [Citations.] Specifically, the question becomes whether the appellant’s evidence was (1) “uncontradicted and unimpeached” and (2) “of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.”’” [Citations.] *Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 466.

This case is the ordinary one posing evidentiary conflicts. It is not our function to retry the case. We affirm the judgment. Because this finding disposes of the appeal, we do not address the parties’ remaining arguments.

IV. DISPOSITION

The judgment is affirmed. Cross-Defendant and Respondent Somsong Pewklieng, Administrator of the Estate of Manit Pewklieng is awarded her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

FERNS, J.*

We concur:

TURNER, P.J.

KRIEGLER, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.